

MEMORANDUM

TO: The Nevada County Transportation Commission

FROM: Daniel B. Landon, Executive Director

SUBJECT: Executive Director's Report for the May 19, 2004 NCTC Meeting

DATE: May 13, 2004

1. SR 49/CRESTVIEW INTERSECTION/INTERCHANGE PROJECT REPORT

Project consultant Mark Thomas and Company, Inc. has commenced work on the interchange location study, developing base mapping and preliminary route assessments for road alignments from the North Star Project to SR 49. They are also doing preliminary work on geometric design concepts for the interchange. With regard to the intersection project, Mark Thomas and Company, Inc. has begun an environmental review of properties in the vicinity of the proposed intersection. The next project team meeting will be held in Grass Valley on May 13th.

2. CALTRANS TRANSPORTATION DEVELOPMENT ACT WORKING GROUP

Caltrans has invited the Nevada County Transportation Commission (NCTC) Executive Director to participate in a working group regarding the Transportation Development Act (TDA). The group is made up of approximately eighteen individuals representing regional transportation planning agencies, the California State Controller's Office, the California Department of Aging, and transit and paratransit providers. During their first meeting, the working group decided to initially focus on four topics of discussion:

- Ways of improving the TDA guidebook
- Review and evaluation of farebox recovery regulations contained in the TDA
- Distinctions between Article IV and Article XIII - Operators and Claims
- "Best Practices" in TDA Administration

The group, which meets about every six weeks, hopes the discussions will result in improvements to the guidebook and in the creation of a "white paper", which will provide an overview of best practices in administration of the TDA. Some of the members of the working group have indicated a desire to have more uniformity in the way it is utilized throughout the State, which could lead to a diminution of local control over TDA funds. My personal focus in participating in this working group is to ensure that local control is maintained, and that the guidelines are improved to make the Act easier to administer and understand.

3. SR 49 GATEWAY MONUMENT

The steering committee has had some email discussions regarding the type of sign or gateway that would be placed near the Bear River Bridge on SR 49. The committee will be meeting in May to discuss using a base similar to a gateway sign constructed in Lake County, and to consider what type of logo or sign to use to represent the County, (e.g. ideas include a replica of the Gentle Giant statue, an outline of the County, or the “49er miner” that has been used throughout the Gold Country). There is considerable support on the committee for using a base that will have rockwork similar to that used on the railings of the Bear River Bridge.

4. REGIONAL TRANSPORTATION MITIGATION FEE UPDATE

I am working on an annual update of the Regional Transportation Mitigation Fee Program. This update will include new projects from the Brunswick Corridor Study and the frontage road improvements between the Idaho-Maryland Road/East Main Street on-ramp and the South Auburn Street/Colfax intersection. As of April 30th, revenues for FY 2003/04 are within 7% of the projected amount. In addition to adding new projects to the mitigation fee program, the existing projects will be reviewed for cost increases due to changes in project scope and in the Construction Cost Index.

5. NEVADA CITY/NEVADA COUNTY BOULDER STREET/RED DOG ROAD TRAFFIC ANALYSIS

In keeping with our process of updating the Regional Transportation Plan and to assist Nevada City and Nevada County, we are utilizing Grant Johnson’s traffic modeling skills to analyze alternative routes from the Red Dog/Boulder Street corridor to destinations within the Grass Valley/Nevada City community. Results of this analysis will be used to assist the City and County in addressing the impacts of proposed projects along the Boulder Street/Red Dog Road corridor. We expect to have Mr. Johnson's analysis completed by May 21st.

6. WESTERN NEVADA COUNTY TRANSIT OPERATORS TRIENNIAL PERFORMANCE AUDIT – TRANSIT GOVERNANCE

Recommendation #1 in the Performance Audit reads: *To address the bifurcated nature of transit governance in western Nevada County, the TSD (Transit Services Division) should work with the NCTC to study alternative institutional options and their potential implications. Ultimately, NCTC should encourage its member jurisdictions to undertake any changes deemed beneficial.*

At the April NCTC meeting, Commissioners directed staff to place this item on the May agenda and noted the potential for NCTC to apply for FTA grant funds for transit planning projects. Although NCTC has primary responsibility for allocating funds, identifying unmet needs, and evaluating the economy and efficiency of transit services, it is not a member of the Joint Powers Agreement (JPA) that establishes how transit operations are to be governed. In recognition of that fact, and after evaluating the timing of the FTA grant funding cycle, NCTC staff supports the TSD proposal that an in-house analysis of transit governance issues be completed during the 2004/05 FY.

Applying for FTA grant funds is a competitive process. Grant applications are submitted in October, notification of successful applications is made during the following January, and the projects are implemented during the ensuing fiscal year. This would mean that if an analysis of the governance issues were awarded grant funding, the actual analysis would not get underway until July 2005.

By conducting an in-house analysis, JPA members, acting through the TSC, can direct the scope and timing of the work, and NCTC staff could provide assistance with research and preparation of information. It is conceivable that a transit governance alternative could be ready for implementation much sooner than if FTA grant funds were used to conduct the analysis. Therefore, I recommend that the NCTC encourage the TSC to undertake development of a scope of work and to proceed with completion of an analysis of transit governance alternatives as soon as possible after the start of FY 2004/05.

On May 10th we became aware of a potential opportunity to provide funding for the proposed analysis. STIP (State Transportation Improvement Program) recommendations from the California Transportation Commission include planning funds for NCTC that we did not expect to be available in 2004/05. If the STIP recommendations are approved, we may be able to use other planning funds to pay for a consulting firm to complete an analysis of transit governance issues.

7. BROWN ACT REGARDING EMAIL COMMUNICATIONS

With the increased use of email, a member of the Nevada County Transportation Commission asked me to provide an update of information regarding the Brown Act and email communications. To ensure that you have full information regarding California's "Open Meeting Law", you can access the Brown Act online at http://caag.state.ca.us/publications/2003_Intro_BrownAct.pdf or you can view a copy at the NCTC office.

With regard to email communications between the Commissioners and staff, I would like to highlight two key points. The Brown Act states in Chapter III, "Meeting Defined", on page 8:

First, the term "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any matter which is under the subject matter jurisdiction of the agency.

Second, the Act specifically prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken. Most often, this type of meeting is conducted through a series of communications by individual members or less-than-a-quorum groups, ultimately involving a majority of a body's members. These meetings are called serial meetings.

In light of these definitions it is important that in utilizing email communications, the Nevada County Transportation Commission members and staff do not conduct a "serial" meeting.

Chapter III, Section 5, "Writings as Meetings", page 15, includes the following:

Historically, meetings have not commonly occurred through written instruments; however, the court found that circulation of a proposal among board members for their review and signature was found to be a meeting in violation of the Act when a majority of the members of a legislative body signed the document. However, the emergence of e-mail as a simple and effective means of communication has raised this issue in a fresh context. In 84Ops.Cal.Atty.Gen.30(2001), this office concluded that a majority of a body would violate the Act if they e-mailed each other regarding current issues under the body's jurisdiction even if the e-mails were also sent to the secretary and chairperson of the agency, the e-mails were posted on the agency's

Internet Web site, and a printed version of each e-mail was reported at the next public meeting of the body. The opinion concluded that these safeguards were not sufficient to satisfy either the express wording of the Act or some of its purposes. Specifically, such e-mail communications would not be available to persons who do not have Internet access. Even if a person had Internet access, the deliberations on a particular issue could be completed before an interested person had an opportunity to become involved.

Further information regarding communications between Commissioners and staff members can be found in Chapter III, Section 2, "Serial Meetings", starting on page 11. This section indicates that the prohibition against serial meetings does not prevent an executive officer from planning upcoming meetings by discussing dates, times, and placement of matters on the agenda. It also notes that an executive officer may receive spontaneous input from any of the Board members with respect to these or other matters, so long as a quorum is not involved.

Chapter III, Section 3, "Individual Contacts Between Members of the Public and Board Members", indicates that individual contacts or communications between members of a legislative body and any other person are exempt from the definition of a meeting. The term "any other person" is construed to mean any person other than a Board member or agency employee.

I have discussed these issues with NCTC Legal Counsel, Steve Gross, and, in light of all these factors, staff will only provide Commission members with general information that will not be used in any decision making process via email. Any time such emails are distributed, a copy will be placed in the next meeting agenda packet under correspondence. If Commission members feel there is a need for additional information regarding the Brown Act, staff will arrange for our legal counsel to attend an upcoming Transportation Commission meeting and discuss the issues at that time.